

1 that permits us to distribute Tennis Channel
2 or not distribute Tennis Channel on any --
3 basically any tier or level of service.

4 The deal -- and there was a
5 subscriber fee specified in the contract. So
6 the number of subscribers that we are
7 delivering to The Tennis Channel each month
8 would then be multiplied by the subscriber fee
9 specified in the agreement and that would
10 result in a license fee payment that we would
11 pay each month to The Tennis Channel based on
12 our distribution.

13 Q Go ahead.

14 A The deal did not have a
15 distribution obligation. It had a termination
16 right in it on behalf of The Tennis Channel if
17 we didn't achieve certain distribution
18 benchmarks during that period of time.

19 Q In other words, if you failed to
20 honor your side of it with respect to
21 distribution, Tennis Channel could just
22 terminate the deal?

1 A Correct.

2 Q Okay. And has Tennis Channel ever
3 done that? Have they ever come to you and
4 said we want to terminate the deal?

5 A No.

6 Q And what about with respect to a
7 sports tier? Did your contract with Tennis
8 Channel in 2005 permit you to put the channel
9 on a sports tier?

10 A It did.

11 Q And did you have discussions at
12 the time with Tennis Channel about that fact?

13 A Yes.

14 Q And briefly, what were those
15 discussions?

16 A Well, the context of our
17 discussions with The Tennis Channel were
18 around the sports tier. That's what had
19 driven our interest in doing a deal with the
20 network. That was the deal that they had done
21 with Cox. That was the deal they had done
22 with Time Warner. We were following a similar

1 strategy, launching a sports tier. So we did
2 a deal that the context of the discussions
3 were a sports tier deal. That was what was
4 being discussed between the parties.

5 Q Okay, and so after you sign up
6 your contract with Tennis Channel in 2005, do
7 you give them distribution?

8 A Yes.

9 Q How much and in what way do you
10 give them distribution?

11 A Over a period of about 18 months,
12 it became more or less fully distributed on
13 Comcast systems on the sports tier.

14 Q Now what does that mean for His
15 Honor, "fully distributed", can you just put
16 that in simple terms, "fully distributed"?

17 A Yes. Most of the Comcast systems
18 launched Tennis Channel on the sports tier.

19 Q How many Comcast systems, when you
20 say "most of the systems", how many systems
21 are there?

22 A There are a few thousand systems,

1 but you have subscribers serving a total of
2 about 23 million homes. I would guess Tennis
3 Channel is in probably [REDACTED] percent of those
4 systems or greater at present.

5 Q Okay, now it's in those systems in
6 the sense that viewers in those systems have
7 the ability to get the programming, is that
8 right?

9 A That's correct.

10 Q But at what service level is it
11 made available to them?

12 A On the sports tier, there are some
13 exceptions. There are some systems that carry
14 it more broadly.

15 Q So most of the systems Comcast
16 nationwide are carrying it on a sports tier,
17 but are there some systems where it's getting
18 broader distribution?

19 A There are.

20 Q For example, can you give some
21 examples?

22 A Jacksonville and a few -- a number

1 of other systems in the South. I think
2 there's about a hundred systems.

3 Q About a hundred systems, including
4 Jacksonville?

5 A Yes.

6 Q And in those systems what kind of
7 distribution is Tennis Channel getting there?

8 A Digital basic.

9 Q Digital basic. So it's getting
10 greater distribution in those systems?

11 A Yes.

12 Q And do you remember how that came
13 to be that you have some systems that are
14 distributing it more broadly?

15 A Those individual systems had made
16 a judgment based on their individual market
17 circumstances that they felt The Tennis
18 Channel was better for the digital basic tier
19 which happens with other networks as well.

20 Q And the vast majority of the other
21 systems have it on a sports tier?

22 A Yes.

1 Q So now let me roll forward to the
2 year after the contract, 2006.

3 JUDGE SIPPEL: I don't understand
4 that.

5 MR. CARROLL: I'm sorry, Your
6 Honor?

7 JUDGE SIPPEL: It's my fault, I
8 guess. I don't understand that. Jacksonville
9 -- will you please explain again what is a
10 system as opposed to a -- what is a system?

11 THE WITNESS: I see. So Comcast
12 has 23 million, serves 23 million subscribers.
13 But you get on the ground, what it actually
14 means it's a set of wires that serves certain
15 portions of subs. So Comcast which serves 23
16 million subscribers probably has a couple
17 thousand systems. So the system is kind of a
18 technical designation of a set of subscribers
19 or really a set of wires.

20 JUDGE SIPPEL: I don't mean to
21 interrupt you, but I'm trying to see if I can
22 short-circuit this, a terrible phrase.

1 Let's say a system would -- some
2 kind of wiring system that would go to let's
3 say a neighborhood or two neighborhoods or
4 three neighborhoods. And that would be a
5 little conclave, so to speak.

6 THE WITNESS: It's typically
7 larger than that.

8 JUDGE SIPPEL: Good. How large
9 are they typically?

10 THE WITNESS: You have a number of
11 them that are pretty large, say a system that
12 would serve the City of Jacksonville or the
13 area of Jacksonville.

14 JUDGE SIPPEL: That would be one
15 system?

16 THE WITNESS: Right. It also
17 could be a collection of systems. For
18 instance, in Philadelphia, Philadelphia is
19 composed of I think 30 different cable
20 systems. This is highly and unfortunately,
21 this is highly technical and kind of difficult
22 to explain, but each one of these collections

1 of homes, they're basically served by what's
2 called a headend. And that headend receives -
3 - that headend is basically, it's a little
4 building that receives the signals of these
5 television channels and then the wires emanate
6 from that headend out into a set of
7 neighborhoods.

8 And so you have all these
9 different headends and all of these different
10 systems. Now as time has gone on, these
11 systems have gotten connected up together, so
12 they're much more seamless and with the
13 development of digital technology, these kind
14 of distinctions are tending to go by the
15 wayside, but still, in the cable business,
16 it's very common to refer to systems as what
17 I just described, that concept of a headend
18 and then wires emanating out from that
19 headend. And that would be one system.

20 JUDGE SIPPEL: Now okay, let me
21 keep this thought, why -- who makes the
22 selection to get the digital basic on a system

1 basis? What party, entity?

2 THE WITNESS: In the case of
3 Tennis Channel, I don't know who made the
4 decision there, but it would have been
5 somebody in the local area that would have
6 decided, based on the market circumstances in
7 Jacksonville that for whatever reason Tennis
8 Channel was better in that market on D1 than
9 the sports tier.

10 JUDGE SIPPEL: Well, is that
11 person, you say some local person. Is that
12 local person being paid by Comcast or being
13 paid by the City of Jacksonville or being paid
14 by --

15 THE WITNESS: He or she would be a
16 Comcast employee.

17 JUDGE SIPPEL: And the Comcast
18 employees calls up headquarters and says hey,
19 we've got a situation down here. I think I
20 can justify this that it should be expanded to
21 D1 because of whatever?

22 THE WITNESS: Yes.

1 JUDGE SIPPEL: That's basically
2 it?

3 THE WITNESS: Yes, that's correct.

4 JUDGE SIPPEL: Okay.

5 MR. CARROLL: Let me follow up,
6 Your Honor with one other aspect of that
7 because I think that -- you have anticipated
8 where I was going to go. In fact, you've
9 eliminated about 50 percent of my questions so
10 far.

11 JUDGE SIPPEL: We'll go to lunch
12 early.

13 MR. CARROLL: We'll go to lunch
14 early.

15 BY MR. CARROLL:

16 Q Talk about the cost aspect of it.
17 So for a system like Jacksonville, staying on
18 Jacksonville, if Jacksonville wants to
19 distribute any program more broadly, who pays
20 the cost of that and who makes the decision
21 about the cost- benefit equation of that?

22 A Jacksonville would bear the brunt

1 of that cost in their P&L in Jacksonville's
2 P&L.

3 Q And explain that, when you say
4 Jacksonville's P&L, is there some kind of a
5 budget that's set and if so, how does that
6 work and would the cost come out of their
7 budget and who makes those decisions?

8 A Yes. The way that works is that
9 individual systems in Comcast all have
10 individual budgets every year. And those
11 budgets are worked on over the course of the
12 year and then those budgets are aggregated
13 into regions and then divisions and then
14 ultimately to a large corporate budget. This
15 is a multi-month process that goes on every
16 year. So programming costs are an attribute
17 of each system's budget. So the programming
18 costs are something like The Tennis Channel or
19 any channel really, is baked into the
20 Jacksonville P&L, along with their revenue and
21 all their other expenses as well. So they
22 have

1 -- Jacksonville will have its own budget, but
2 that budget aggregates together with all the
3 other budgets for all the other systems into
4 a company-wide budget.

5 Q And the budget at the Jacksonville
6 level, that's not a budget for just one
7 channel, that's the budget they have for all
8 the channels that they're going to show?

9 A That's the budget they have for
10 the business period. It's for the entire
11 business.

12 Q And the entire business would
13 include all of the channels that Jacksonville
14 system is putting on the air there?

15 A Yes, yes.

16 Q So they have to allocate their
17 budget among all those channels, is that
18 right?

19 A Yes.

20 Q And what happens if they want to
21 increase funds for one channel? Can it have
22 implications for what they're doing with other

1 channels and if so, please explain that.

2 A Increasing the programming fees on
3 one channel won't necessarily reduce the
4 programming fees on another channel. These
5 are somewhat independent.

6 Q I meant a different question.
7 What if Jacksonville wants to increase a spend
8 on one channel so now it's beyond its budget,
9 can it have implications in the sense that it
10 might require them to decrease the funds for
11 another channel in order to make up for it?

12 A Or find the money somewhere else.

13 Q How would they find the money
14 somewhere else?

15 A They'd have to -- it could be
16 somewhere else in the budget. It could be
17 call center or getting rid of a truck. They
18 would have to find the money somewhere.

19 Q Find it by cutting back elsewhere
20 and saving the cost that would be needed?

21 A Yes.

22 Q Could it involve getting rid of

1 employees to do that, for example?

2 A Yes, potentially.

3 Q Okay.

4 MR. CARROLL: Your Honor, any more
5 questions in that area or should I move on?

6 JUDGE SIPPEL: It is a cold world
7 out there. No, I'm basically with you on all
8 of this. I did have a thought here. Oh,
9 would this be similar to like if you had --
10 well companies, this is common, they have
11 subsidiaries, operate in subsidiary fashion?

12 THE WITNESS: Yes.

13 JUDGE SIPPEL: And subsidiaries I
14 think are generally referred to as profit
15 centers?

16 THE WITNESS: Yes.

17 JUDGE SIPPEL: And if you were
18 running a subsidiary, you're a CEO of a
19 subsidiary, you have to run it as a profit
20 center?

21 THE WITNESS: Yes.

22 JUDGE SIPPEL: At the end of the

1 year, you're going to be responsible for
2 showing the big house, if you will, how you've
3 done. Is this essentially the same thing with
4 a system?

5 THE WITNESS: Yes. That's
6 actually a terrific analogy. Each one of
7 these systems, each one of these system
8 managers are essentially a cable operator.
9 They're running a business. They have
10 revenues. They have expenses up and down the
11 line, programming costs, electricity for their
12 offices, trucks, employees, the whole thing.
13 So they have a revenue line coming in. They
14 have various expenses and they have a profit
15 that's generated and they're judged on their
16 performance.

17 JUDGE SIPPEL: So then they have
18 to submit each year, I suspect, for a new
19 budget?

20 THE WITNESS: Yes, sir.

21 JUDGE SIPPEL: It's a regular
22 process they go through.

1 THE WITNESS: It is.

2 JUDGE SIPPEL: And who would they
3 negotiate their budget with?

4 THE WITNESS: It's a very complex
5 process. I'm not completely involved in that,
6 but it stands several months every year over
7 the summer and the company is organized into
8 these systems and then there are collections
9 of systems are organized into regions and then
10 regions are organized into divisions and then
11 you have the top of the company.

12 And so what would happen during
13 the budget preparation is these individual
14 system managers that you referred to as the
15 profit centers, right, these individual system
16 managers would create a budget and then the
17 division folks would aggregate all of those
18 budgets together and then they would have a
19 division budget and then that would be
20 submitted up to corporate. And corporate
21 would work with division on the budgets and it
22 was a back and forth process and then at the

1 end of a few months, you would have a budget
2 for the whole company. But the budget for the
3 whole company really included many, many
4 different small budgets for individual
5 systems.

6 And so that's what the overall
7 corporate budget reflected was the aggregation
8 of all of those individual profit centers, as
9 you described them. And individual system
10 managers were judged on their performance with
11 respect to their individual budget. And
12 division heads were judged on their
13 performance for their division.

14 JUDGE SIPPEL: And regions
15 similarly.

16 THE WITNESS: Exactly.

17 JUDGE SIPPEL: The manager,
18 whatever he's called, the systems manager when
19 he proposes a budget, but he's going to have
20 to defend what he's proposing right? It's not
21 just "that's what you need, Charlie, we'll
22 give you the check."

1 THE WITNESS: Absolutely.

2 JUDGE SIPPEL: So now does he have
3 to negotiate that with regions and then
4 regions, when regions approves, well, let's
5 say you can't obviously approve it, but gives
6 clearance or gives preliminary approval to the
7 systems guy, then regions takes that and other
8 ones and it goes up to the division and then
9 division does basically the same thing.

10 THE WITNESS: That's exactly
11 right.

12 JUDGE SIPPEL: So the systems guy
13 for this kind of analysis, he didn't have
14 anything to do with any other corporate --
15 what am I trying to say? Corporate oversight
16 is going to be the regional director. He's
17 not going to be dealing with division
18 directors or certainly not with the main
19 office for this purpose.

20 THE WITNESS: Yes.

21 JUDGE SIPPEL: Okay, go ahead.

22 THE WITNESS: It's a little more

1 porous than that. It's not as hierarchical.

2 JUDGE SIPPEL: The concept is --

3 THE WITNESS: Yes.

4 JUDGE SIPPEL: That's the
5 practicality of it and that's the efficiency
6 of it. You don't want everybody wandering all
7 over the lot on the same question.

8 THE WITNESS: That's correct.

9 JUDGE SIPPEL: So you run them up
10 this way.

11 THE WITNESS: Yes.

12 JUDGE SIPPEL: Thank you.

13 BY MR. CARROLL:

14 Q And with respect to the budgeting,
15 when Tennis Channel was launched, I think you
16 said throughout most of the systems on a
17 sports tier, could you explain for His Honor
18 what budget implications would flow from the
19 sports tier level launch? Would that affect
20 local systems' budgets or not and if it would,
21 in what way would it affect those budgets?

22 A So once the sports tier was

1 launched, systems would then have a budgeted
2 amount in -- they would have a budget line in
3 their budget for the sports tier. In that
4 case, it would have an associated revenue line
5 and it would have an associated expense line.
6 And the expense line would, of course, be for
7 the programming costs for the sports tier.

8 So just to rewind, as I discussed
9 earlier about The Tennis Channel deal, to use
10 an example, it required us to pay for each
11 subscriber of The Tennis Channel, it required
12 us to pay a fee every month.

13 JUDGE SIPPEL: That is the license
14 fee.

15 THE WITNESS: That is the license
16 fee. So for services that were on the sports
17 tier, you would have an aggregation. If
18 you're an individual system, you have an
19 aggregation of license fees for the sports
20 tier. So that's a piece of your budget that's
21 cost. You would also have another piece of
22 your budget that was revenue and that was the

1 amount you were collecting from a customer
2 because we were charging the customer for the
3 sports tier around \$5 a month.

4 So you would have a budgeted
5 amount for revenue. And you would have a
6 budgeted amount for costs.

7 JUDGE SIPPEL: Now on the --

8 THE WITNESS: And those two would
9 move together.

10 JUDGE SIPPEL: In the scheme of
11 things, at my fundamental level of
12 understanding, basically -- do you know how
13 many subscribers you have and you're hoping to
14 get more? But you know how much you have when
15 you -- at the point that you are preparing
16 your budget, you pick up the phone and you
17 find out how many we have, three million, ten
18 million, whatever it might be. And then you
19 know they're going to pay an extra \$5. So you
20 know that. And then you also know what the
21 licensing fee is going to be for those three
22 million.

1 THE WITNESS: Yes.

2 JUDGE SIPPEL: So I mean coming up
3 with those numbers should be a relatively --
4 I don't want to say easy, but a relatively
5 secure process.

6 THE WITNESS: It is. Well,
7 there's risk if you were to lose subscribers.

8 JUDGE SIPPEL: Obviously.

9 THE WITNESS: Right. And if you
10 lost subscribers, then the revenue line comes
11 down and the cost line comes down as well for
12 the sports tier.

13 JUDGE SIPPEL: Oh yes, it would.
14 Paying less --

15 THE WITNESS: Yes, they're
16 completely linked. So if instead of having
17 three million customers, you have -- here's
18 the example. If you had three million
19 customers times \$5 a month, that's \$15 million
20 in revenue per month. And if the license fees
21 for the sports tier was [REDACTED], you would have
22 [REDACTED] in expense, so you'd have [REDACTED]

1 [REDACTED] in revenue, [REDACTED] in expense.

2 If you then went down to [REDACTED]
3 subscribers, if you lost subscribers, you did
4 a poor job marketing or whatever, and you lost
5 subscribers, then the [REDACTED] would go down
6 to [REDACTED] in revenue and [REDACTED] in
7 expense.

8 JUDGE SIPPEL: So the proportion
9 pretty much stays --

10 THE WITNESS: The proportion would
11 stay the same.

12 JUDGE SIPPEL: I'm trying to
13 think. The network, independent network, I
14 just want to say it that way, they would be
15 taking the gamble of what distributor they
16 were using because it's up to the distributor
17 to really get that programming out to
18 subscribers. There's nothing much really that
19 the network that the programmer can do once it
20 reaches that stage. Is that basically right?

21 THE WITNESS: Yes.

22 JUDGE SIPPEL: Give or take a

1 little?

2 THE WITNESS: Yes.

3 JUDGE SIPPEL: So for the
4 distributor, it's kind of a win-win situation
5 because aside from the situation, the unusual
6 variance where you have a -- the boss of the
7 system is out on a binge or something like
8 that, but if you're basically trying to do the
9 right thing, but somebody doing the
10 programming, the subject of it just isn't
11 hanging on to a subscriber, you just explained
12 it very graphically. He's going to be losing,
13 but he's not going to be wiped out.

14 THE WITNESS: No, but he's going
15 to be losing.

16 JUDGE SIPPEL: That's not a good
17 sign.

18 THE WITNESS: No. Well, what
19 happened in that instance is in that example
20 was that system manager missed his or her
21 revenue number by [REDACTED]. That's going to
22 be a very significant problem.

1 So while the programming business
2 and the distribution business, it's very much
3 traditional wholesale/retail situation and
4 yes, all the programmers depend on the
5 distributors trying to sell the product, but
6 the distributors really want to sell the
7 product because that's how you get revenue in.

8 So you don't want to save
9 programming costs by losing customers.

10 JUDGE SIPPEL: I see. And those
11 numbers, those projections and everything,
12 they're going up to regional, division, and
13 then to the main company, I mean they're going
14 to future planning based on those numbers, so
15 --

16 THE WITNESS: That's exactly
17 right.

18 JUDGE SIPPEL: So they better be
19 pretty good or you're going to have -- you
20 might not have a job on Monday.

21 THE WITNESS: That's exactly
22 right. So in your example with your three

1 million sub example, that would be baked into
2 that system's budget, the revenue, both the
3 revenue and expenses.

4 JUDGE SIPPEL: And expenses.

5 THE WITNESS: So if they exceeded
6 it, if they ended up with [REDACTED], then
7 they have a positive variance to budget and
8 that's fantastic. Programming costs went up,
9 but the revenue went up. So they're actually
10 in a positive zone.

11 JUDGE SIPPEL: That's bonus
12 territory.

13 THE WITNESS: Exactly. Exactly.

14 JUDGE SIPPEL: Okay, I'm with you.

15 THE WITNESS: But if they lose
16 subs, they're in trouble because they're
17 losing revenue.

18 JUDGE SIPPEL: They're screwing up
19 the financial picture of the company.

20 THE WITNESS: Exactly, they're
21 reducing the profitability of the company.

22 JUDGE SIPPEL: Okay.